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Ms. Magalie Roman Salas
Federal Communications Commission
1919 M Street, N.W.
Room 222
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

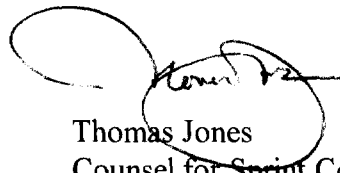
Re: CC Docket No. 97-231, Application By BellSouth Corporation,
BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc.
For Provision Of In-Region, InterLATA Services in Louisiana

Dear Ms. Salas:

Enclosed please find an original and six copies of Sprint Communications Company L.P.'s "Petition to Deny" concerning the above-referenced Application. In addition to the original and six copies, we also attach a diskette version of the filing and the attached affidavits formatted in WordPerfect 5.1 (read-only).

If you have any questions concerning this filing, please contact the undersigned.

Sincerely,



Thomas Jones
Counsel for Sprint Communications Company L.P.

Attachments

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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Application of BellSouth Corporation,
BellSouth Telecommunications, Inc., and
BellSouth Long Distance, Inc.
Pursuant to Section 271 of the
Communications Act of 1934, as
amended, To Provide In-Region
InterLATA Services to Louisiana

CC Docket No. 97-231

PETITION TO DENY OF SPRINT COMMUNICATIONS COMPANY L.P.

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036
(202) 328-8000

Dated: November 25, 1997

TABLE OF CONTENTS

	PAGE
INTRODUCTION AND SUMMARY	1
I. BELL SOUTH CANNOT MEET THE REQUIREMENTS OF TRACK A AND CANNOT PROCEED UNDER TRACK B.	5
A. The PCS Providers Cited By BellSouth Are Offering Mobile Services That Do Not Satisfy Track A.	5
1. The Commission Has Repeatedly Found that PCS Does Not Now Compete with Landline Telephone Service.	6
2. The Commission's Findings Are Fully Substantiated.	9
3. The Statute Should Not Be Read to Ignore the Realities of the Market.	15
B. BellSouth Has Received Several Qualifying Requests.	20
C. The Qualifying Requests Foreclose the Availability of Track B.	22
II. BELL SOUTH'S APPLICATION IS INSUFFICIENT ON ITS FACE TO MEET THE REQUIREMENTS OF SECTION 271(c)(2), THE COMPETITIVE CHECKLIST.	23
A. The Commission Has The Authority And The Obligation To Review Checklist Compliance De Novo In Light Of The BOC's Performance Under Interconnection Agreements.	24
B. BellSouth Does Not Provide OSS In Accordance With The Commission's Rules.	26
1. BellSouth's OSS Offerings Are Deficient On Their Face.	27
2. Sprint's Experience In Florida Shows That BellSouth's OSS Systems For Unbundled Loop Offerings Cannot Support Viable CLEC Entry	31
3. BellSouth Still Has Not Provided Adequate Performance Measures.	34
C. BellSouth Places Unlawful Conditions And Restrictions On The Resale Of Its Services.	36

1.	BellSouth Imposes Unlawful Conditions On Resellers.	37
2.	BellSouth Discriminates Unlawfully Against Resellers That Provide Operator Services.	39
D.	BellSouth's UNE Prices In Louisiana Are Not Geographically Deaveraged.	40
E.	BellSouth Refuses To Permit CLECs To Combine UNES To Provide Services BellSouth Offers At Retail.	41
1.	BellSouth's Position Has Not Been Fully Disclosed in this Proceeding.	42
2.	BellSouth's Position Is Unlawful.	43
3.	BellSouth Violated Its Duty of Candor in Obscuring Its Position On UNE Unbundling.	46
F.	The FCC Has Jurisdiction Over The Terms And Conditions For UNE Recombination.	50
G.	BellSouth Does Not Provide Interconnection In Compliance With Section 251(c)(2) Or The Commission's Rules.	52
H.	BellSouth Has Refused To Provide Numerous Checklist Items Based On Unfounded Claims Of Technical Infeasibility.	56
III.	BELLSOUTH HAS FAILED TO DEMONSTRATE THAT IT HAS COMPLIED WITH THE SEPARATE AFFILIATE SAFEGUARDS OF SECTION 272.	59
IV.	BELLSOUTH'S APPLICATION IS INCONSISTENT WITH THE PUBLIC INTEREST.	63
A.	The Effects On the Local Market Alone Dictate the Conclusion that Relief Would Be Contrary to the Public Interest.	63
1.	The Commission has Expansive Powers Under the "Public Interest" Section of 271.	64
2.	Section 271 Relief Is Not Justified As An Inducement To IXCs To Enter The Local Markets.	71
B.	The Effects on the InterLATA Market Also Require Denial of the Application.	73

1.	BellSouth's Claims of Benefits to InterLATA Markets Are Entitled To No Weight.	73
2.	Predictable Harm To The InterLATA Market Is Alone Sufficient Reason To Deny The Application.	75
a.	Discrimination.	75
b.	Cross-subsidization.	77
c.	Access Charge Reform Is A Prerequisite to Entry.	81
CONCLUSION		83

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Pursuant to Section 271 of the)
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InterLATA Services to Louisiana)

PETITION TO DENY OF SPRINT COMMUNICATIONS COMPANY L.P.

Sprint Communications Company L.P. ("Sprint"), by its attorneys, hereby petitions the Commission to deny the above-captioned application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc.

INTRODUCTION AND SUMMARY

It is now abundantly clear that BellSouth has no intention of cooperating in opening the local markets in its region. Its application for Section 271 authority in Louisiana should be denied for its chronic failure to meet the requirements of the statute. Thus, like the South Carolina application, the decision on the merits is easy. But BellSouth knows this. It and the other BOCs have adopted a strategy that combines relentless political pressure on decisionmakers with endless legal challenges to rules and regulations that might actually benefit consumers of local telephone service. BellSouth hopes eventually to receive Section 271 approval in this way without first complying with the statute's requirements. As the Commission

well knows, this strategy will only fail if the FCC remains firmly committed to the requirements of Section 271.

The most appropriate response to BellSouth's application is a simple denial based on the fact that Louisiana is in the "ramp up" period. BellSouth is incorrect that PCS providers qualify as "*competing* providers of telephone exchange service" under Track A, since the PCS services offered today are complementary to and not a substitute for the wireline service offered by BellSouth. Many prospective wireline carriers have, however, requested access and interconnection from BellSouth in Louisiana. As BellSouth itself demonstrates, a combination of ACSI, Entergy/Hyperion, KMC and Shell clearly constitutes a set of qualifying requests. Track B is therefore unavailable. Since no carrier has yet begun to provide predominantly facilities-based residential service, the requirements of Track A have not been met either. The Commission should therefore deny this application for the same reasons it denied the Oklahoma application.

To the extent that it feels the need to review BellSouth's checklist compliance, the Commission will find the instant application almost a duplicate of the flawed South Carolina filing. The Justice Department's conclusion in the FCC's South Carolina proceeding that BellSouth's regionwide operational support systems ("OSS") fail to meet the requirements of the Act applies equally here. BellSouth has done little to improve the situation in the last two months. Indeed, the problems with its OSS are so severe that it is difficult to see how it could

possibly have complied by now. For example, BellSouth's pre-ordering interface still does not offer the kind of nondiscriminatory access required by the Act. Moreover, Sprint's experience in Florida remains a cautionary tale for any prospective entrant hoping to rely on unbundled loops.

In addition to OSS problems, the checklist failings are legion. Unbundled network element ("UNE") prices are not geographically deaveraged, making efficient entry in reliance on these arrangements infeasible. BellSouth also imposes costs on its potential rivals by refusing to provide adequate interconnection. It is also attempting to tie up local business customers with volume discount plans that it refuses to offer at wholesale discounts, as is required.

Perhaps most troubling, BellSouth has adopted a strategy of evasion on certain critical issues. For example, it has repeatedly failed to state openly in its Section 271 briefs filed with the FCC (as it has revealed in letters to CLECs) that it will not permit CLECs to recombine UNEs to provide services BellSouth already offers. A failure to be forthcoming and candid is by itself grounds for rejection. BellSouth has also added to its Louisiana application vague indications (not contained in its South Carolina application) that it will resist CLEC recombination efforts. The Commission cannot grant any application containing this kind of thinly veiled threat to ignore clear legal obligations. A failure to be forthcoming and candid should be adequate grounds by itself for rejection.

The pattern of evasion and resistance is repeated in the Section 272 context, where BellSouth persists in the argument that it is somehow not required to comply with the requirements of Section 272 until it has been granted Section 271 approval. This is of course nonsense. Indeed, as is demonstrated by BellSouth's apparent failure to comply with Section 272, the BOC's proposed interpretation would allow applicants to accomplish discrimination and cross-subsidy before an application is even filed. This would leave post-approval enforcement ineffective.

Finally, there is no need to reach the public interest issue. Nevertheless, this application clearly fails to clear that hurdle. In no sense has the local market been irreversibly opened to competition. Entry in Louisiana is promising but at this point sparse. BellSouth's strained reading of the public interest provision notwithstanding, this is the central inquiry required of the Commission under Section 271(d)(3)(C). Moreover, there is no need to take seriously BellSouth's now fully refuted position that BOC long distance entry would somehow encourage local competition. The real reason for the lack of local competition in Louisiana is rather BellSouth's refusal to cooperate in opening its local market. It unfortunately appears that the Commission will be forced to reject quite a few of these applications before this strategy will be reconsidered.

I. BELLSOUTH CANNOT MEET THE REQUIREMENTS OF TRACK A AND CANNOT PROCEED UNDER TRACK B.

This application cannot meet the requirements of Track A and BellSouth is not eligible to proceed under Track B. First, BellSouth's argument that it satisfies Track A because there are PCS providers operating in Louisiana is baseless. Second, BellSouth cannot qualify for Track B because it has received qualifying requests from companies for interconnection agreements that, when implemented, will result in the provision of the kind of service described in Section 271(c)(1)(A). Louisiana local markets are thus in the "ramp-up" period which Congress contemplated in Track A.¹ BellSouth's application is fatally premature.

A. The PCS Providers Cited By BellSouth Are Offering Mobile Services That Do Not Satisfy Track A.

BellSouth tries to wedge itself into Track A by pointing to the emergence of PCS services in New Orleans and Baton Rouge. BellSouth's offer of proof shows no more than what the FCC and industry observers have repeatedly described: PCS has the potential, under certain conditions, to become a viable,

¹ In the Matter of Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Oklahoma, CC Dkt. No. 97-121, *Memorandum Opinion and Order* at ¶¶ 43-46 (rel. June 26, 1997) (Congress recognized "that there would be a period during which good-faith negotiations are taking place, interconnection agreements are being reached, and the potential competitors are becoming operational by implementing their agreements") ("Oklahoma Order").

competitive alternative to fixed, wireline service in the future. The future is not here yet.

1. The Commission Has Repeatedly Found that PCS Does Not Now Compete with Landline Telephone Service.

By directive of Congress, the Commission conducts annual studies on the "competitive market conditions" facing PCS and other CMRS.² Earlier this year, as directed by the statute, the FCC made its annual report to Congress on its continuing efforts to "gauge the extent to which wireless services are a complement to or a substitute for wireline service."³ The FCC explained:

A key aspect of our analysis . . . is to look at the prices for both types of services. In the First Report, we stated that, based on available pricing data, there appeared to be a significant premium for mobile service as compared to wireline service, and that *wireless telephone service prices will have to fall well over 50 percent for wireless service to be fully price-competitive with traditional telephone service.* * * * *This remains the case.*⁴

The Report found,

The services offered by the few operating broadband PCS carriers are currently priced closer to cellular service than to comparable wireline services and therefore *it is too early to state that broadband PCS providers' offerings might be perceived as a wireline substitute.*⁵

² 47 U.S.C. § 332 (c) (1) (C).

³ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Second Report, FCC 97-75, 12 FCC Rcd. 11266 at 11323 (rel. Mar. 25, 1997) ("CMRS Competition Report").

⁴ Id. at 54 (emphasis added).

⁵ Id. at 55 (emphasis added).

The Commission's conclusion is based upon a number of quantitative findings, including the relatively short duration of mobile calls, per-minute price structures of mobile service providers, and overall service prices (which presumably include both service price levels as well as handset expense). The Report goes on to suggest reasons why the future may be promising (e.g., marketing trends of PCS to package value-added services, incoming call pricing patterns), but makes unmistakably clear that PCS is not now competing with wireline services.⁶

The Commission applied this learning in considering the Bell Atlantic-NYNEX merger earlier this year. The Commission there carefully considered the market for fixed local telephone services and actual and potential market participants in evaluating the competitive effects of the merger. It specifically rejected arguments that CMRS -- cellular, PCS or SMRS -- should be included within that market:

Mobile telephone service providers are currently positioned to offer products that largely complement, rather than substitute for, wireline local exchange. These providers utilize spectrum whose carrying capacity is relatively finite. There are economic and technical limits to increasing spectrum reuse through reduction in cell size and use of compression and encoding techniques. Additionally, their installed technology and facilities are specialized for use in mobile communications. These factors limit the ability of wireless carriers to compete on a mass market scale with wireline providers in the local exchange and exchange access services markets. Although the Applicants predict that some of these providers will become competitors to wireline providers, the

⁶ Most significantly, the Commission notes that CMRS competition for wireline business will depend upon access to the ILEC networks. This includes both cost-based pricing and number portability.

Applicants recognize that . . . such competition is currently precluded as a practical matter by the higher prices that mobile telephone service providers can charge. * * * Accordingly, we are unpersuaded . . . that mobile telephone service providers are, at this time, either singularly or as a class, significant market participants; they lack the requisite incentives and access to facilities that would allow them to compete effectively in the relevant market.⁷

Only last month, the Commission observed,

We have . . . considered information available on consumers' inclinations to switch between mobile phone services and other individual communications services (particularly potential substitutes like payphones, pagers, private wireline services, etc.) in response to price changes or other competitive signals. Consumers appear to perceive these various services to be distinct, and the Commission has previously recognized that mobile services can be distinguished on the basis of functional differences.⁸

The Commission further noted that, as it had already determined in recent proceedings, "mobile communications services are largely complementary to wireline services," noting that wireless services providers may offer substitutes for wireline services in the future.⁹

⁷ Bell-Atlantic-NYNEX, FCC 97-286 at ¶ 90 (rel. Aug. 14, 1997) (attached at App. A). The Order also notes that "fixed wireless may ultimately become a viable (and in some markets, a formidable) substitute for wireline service, but whether that occurs depends upon spectrum availability, technological issues, and future events." Id. at ¶ 91.

⁸ Pittencrieff Communications Inc. and Nextel Communications, Inc. For Consent to Transfer Control of Pittencrieff Communications, Inc. and its Subsidiaries, CWD Dkt. No. 97-22, Memorandum Opinion and Order, at ¶ 27 (rel. Oct. 24, 1997) (attached at App. A).

⁹ Id. at n.59.

These repeated and consistent conclusions are well-founded in economic analysis. From either a supply or demand perspective, there is no basis for finding otherwise. Under a traditional relevant market analysis, mobile wireless services do not and cannot now compete with wireline services.¹⁰

2. The Commission's Findings Are Fully Substantiated.

The briefest of analyses and observations yield the very conclusion the Commission has reached. Applying the traditional Brown Shoe¹¹ criteria, CMRS and wireline service each has particular uses and characteristics. CMRS plainly offers the advantage of mobility; landline services offer ubiquity and reliability. It is telling that PCS and cellular companies advertise their signal quality relative to one another, not to landline service. This fact is in full evidence in Appendix A, a

¹⁰ The Commission has utilized relevant market analysis to evaluate specific transactions, see, e.g., Bell Atlantic-NYNEX, supra; In re: the Application of MCI Communications Corp. and Southern Pacific Telecommunications Corp. For Consent to Transfer Control of Qwest Communications, Inc., 10 FCC Rcd 1072 (1994); In the Matter of Application of General Electric Corp., GE Subsidiary, Inc. 21, and MCI Communications Corp. for Authority to Transfer Control of RCA Global Communications, Inc., Memorandum Opinion and Order, 4 FCC Rcd 8207 (1989), as well as for purposes of assessing market power and the degree of regulatory oversight thus needed to compensate for market failures. See, e.g., In the Matter of Decreased Regulation of Certain Basic Telecommunications Services, CC Dkt. 86-421, Notice of Proposed Rulemaking, 2 FCC Rcd 645 (rel. Jan. 9, 1987); In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Dkt. No. 79-252, Fourth Report and Order, 95 FCC 2d 554 (rel. Nov. 2, 1983).

¹¹ Brown Shoe Co. v. U.S., 370 U.S. 294 (1962).

collection of CMRS advertisements local to the New Orleans area. For example, Sprint Spectrum's ad campaign centers on the key phrase "the clear alternative to cellular."¹² Both the public and industry also recognize PCS and POTS as distinct markets. For example, recent consumer press reports¹³ and industry analyses¹⁴ analyze CMRS wholly separate and apart from local telephone services. From a supply side, some suppliers overlap, but the technologies are fundamentally different. Critically, the installed technology and facilities of CMRS providers are specialized for mobile use. The capacity of the spectrum used is

¹² See Sprint Spectrum Advertisement at App. A.

¹³ See "A Consumer's Guide to the Changing World of Cellular Telephones," TRAC (Oct. 1997) (comparing service qualities of the various wireless technologies without discussion of landline services) (attached at App. A); "Who Needs A Cell Phone?", Consumer Reports, Vol. 62, No.2 (Feb. 1997) (to same effect) (attached at App. A).

¹⁴ See, e.g., "Competition in the Wireless Market," Peter D. Hart Research Associates (Feb. 1997) published at <<http://www.wow-com.com/professional/reference/hart/hart.cfm>>; "PCS v. Cellular: A Quarterly Survey of Wireless Pricing in Markets Where PCS Operators Have Begun Service," Robinson-Humphrey Company (Oct. 8, 1997) (studying price competition between services without mention of wireline service) (attached at App. A). Wall Street analysts generally note the possible future of CMRS companies to compete with fixed services, but place that possibility as many years into the future. See "Intercel, Inc.- Company Report," Robinson-Humphrey Company (May 13, 1997) (concluding that PCS competition with landline is five to seven years away, and describing potential mostly in role as alternative second line); Pacific Bell- Company report, Duff & Phelps (July 2, 1997) (describing PCS as "more of a threat as an attractive part of a competing carrier's service bundle than a vehicle to siphon traffic off PB's local network").

limited relative to the switched landline network, even with reductions in cell size and the use of digital compression.¹⁵

Most significantly, the prices for PCS (and other CMRS) preclude their use as an effective landline substitute. Wireline telephone rates in Louisiana provide for an unlimited number of minutes for local service. In contrast, PCS providers offer service packages with flat fees (which may include a set number of minutes) plus additional usage charges. Note that the per minute charges apply for all incoming calls after the first minute as well. This rate structure also means that only low volume users will find the pricing at all comparable. But even then, the rates still remain substantially higher for CMRS under almost every scenario.¹⁶ Moreover, even if service charges were

¹⁵ See CMRS Competition Report, supra n.3.

¹⁶ See Shapiro Dec. at n.7 and accompanying discussion (App. E). Footnote 7 of the Shapiro Declaration contains the following analysis of PCS pricing versus BellSouth pricing in Louisiana:

[T]he customer with 50 minutes local calling would pay \$26.95 under PrimeCo's May-June 1997 promotion; the lowest Sprint price would be \$36.00. BellSouth service, with all vertical features, is \$29.00. However, the most appropriate comparison is BellSouth service with voicemail and call waiting, the two vertical features included in the PrimeCo plan that BellSouth also offers; this service plan would cost the BellSouth customer \$23.20, still less than PrimeCo. However, if the customer chooses not to purchase vertical features, an option with BellSouth but not PrimeCo or Sprint, he could pay as little as BellSouth's basic 1FR of \$12.64 per month for unlimited local calling. The 50-minute-per-month customers with equal amounts of local and toll (25 minutes each) could pay \$26.95 under a PrimeCo plan, \$3600 under a Sprint plan or \$32.13 with BellSouth, if the customer purchased vertical features. If the customer chose to not purchase all the vertical features, but rather none or just one or two,

at all competitive, the disparate costs of handsets would disable consumers from viewing the services alike. While some vendors offer "disposable" handsets for wireline service, PCS phones are sold at \$100-200 and cost much more; the figures rise dramatically for dual-mode phones. Most significantly, there is absolutely no indication that the introduction of PCS has had any effect on the pricing trends for local telephone service.

The failure of PCS to serve as a Track A competing provider, at least as the services are currently being provided, is also evident in the limited nature of the BellSouth PCS interconnection agreements in the record. The PCS interconnection agreements in Louisiana are expressly designed to allow for the provision of mobile service -- not for fixed services. For example, the BellSouth-PrimeCo agreement recites as its purpose: "The access and interconnection obligations contained herein enable [PrimeCo] to provide CMRS service in those areas where it is authorized to provide such service. . . ."¹⁷ Further, the PCS agreements do not address number portability. The issue of wireless number portability has been understood by both the Commission and the industry

BellSouth's service would be less expensive. With no vertical features, that customer is paying BellSouth just \$15.77.

Id. at n.7.

¹⁷ BellSouth-PrimeCo Personal Communications, L.P. Interconnection Agreement at II; see BellSouth-Sprint Spectrum, L.P. Interconnection Agreement at II; BellSouth-MERETEL COMMUNICATIONS L.P. at II.

participants to raise distinct issues separate and apart from landline portability. In its Number Portability First Report and Order, the FCC stated that CMRS providers will not be required to implement interim number portability.¹⁸

Different treatment of CMRS and wireline carriers in this instance is justified by their differing circumstances. . . . Due to the different nature of CMRS networks and wireline networks, implementation of RCF or DID capability in a CMRS network appears far more problematic and expensive than in a wireline network.¹⁹

BellSouth submits a study sponsored by Mr. William C. Denk to try to show the fixed uses of PCS. BellSouth's brief exhibits some interesting though questionable mathematical skills in citing the Denk Report for the supposed finding "that about 17 percent of PrimeCo's and Sprint Spectrum's 8,000-plus customers chose to subscribe to PCS service *instead of* subscribing to wireline service."²⁰ But the Denk Report itself does not place the number that high. Moreover, without public disclosure of the actual questions asked in the survey, the results of the survey are meaningless. For example, the category of subscribers "Subscribed to PCS for Initial Service Instead of Wireline"

¹⁸ See In the Matter of Telephone Number Portability, CC Dkt. No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking* (rel. July 2, 1996).

¹⁹ Id. at ¶ 169 (citations omitted); see In the Matter of Telephone Number Portability, CC Dkt. No. 95-116, *First Memorandum Opinion and Order on Reconsideration* at ¶ 134 (rel. Mar. 11, 1997) (finding that special technical challenges faced by wireless industry prevent the ready implementation of number portability).

²⁰ BellSouth Br. at 16 (emphasis in original).

appears to be sufficiently broad as to include merely users who placed their PCS order *before* they placed the next phone call or office visit to subscribe to BellSouth's service. If this is correct, the survey hardly shows users viewing the two services as substitutes; it is just an observation as to how so few people first coming to town or to a new address call a PCS company before they call the telephone company.²¹ Given the survey's counter-intuitive results, the slipperiness of BellSouth's representations, and the lack of any back-up data and information as to how it was conducted, the survey cannot be given any weight.

Moreover, the Denk survey stands in marked contradistinction with another survey touted publicly by BellSouth. That study, published on the Web, showed that the primary reasons given by wireless customers as their reason for subscribing all relate to the mobility of the service.²² BellSouth cannot expect the Commission to believe both studies.

²¹ It could also reflect the delays new customers of BellSouth face between the time they place orders for wireline service and the time service is actually installed and/or turned up. Since 1987, US West Communications, Inc. has had FCC authority to provide interim CMRS service to customers who are waiting for provisioning of new wireline service. See In the Matter of Request of US West Communications., Inc. for a Limited Waiver of Section 22.903 of the Commission's Rules, DA 96-605, Order, 11 FCC Rcd 10905 (rel. Apr. 17, 1996). Customers using this CMRS service on an interim basis, however, do not represent customers "substituting" that service for wireline service.

²² See "Five Million Strong for BSCC" press release dated July 25, 1997, published at <<http://www.com/bscc/pr072597.html>> (attached at App. A). The study reports percentages for the following "primary reasons for subscribing": "able to communicate in an emergency" "in touch while away from home

Finally, BellSouth's reliance on the study by the National Economic Research Associates ("NERA") comparing prices for residential wireline and PCS in New Orleans is unconvincing. As Professor Carl Shapiro explains in the attached Declaration, the NERA study merely demonstrates that wireline service is more expensive than PCS "only for a very, very small portion of customers under very circumscribed conditions." As Professor Shapiro explains,

PCS is less expensive than BellSouth wireline service in New Orleans only for customers spending less than 50 minutes on local calls or 100 minutes on toll calls per month and who would nonetheless purchase all of the majority of the five vertical features included in BellSouth's "Complete Choice" package. Given that the *average consumer in Louisiana makes over 1500 minutes of local calls per month and spends at least 13 minutes on the phone on local calls for every one he spends on an intraLATA call, and given that few very-low-use customers are likely to purchase the "Complete Choice" package, the calling and purchasing patterns underlying the NERA study are surely very rare. The NERA study also fails to account for PCS phone prices and mistakenly excludes long distance minutes from its price comparisons.*²³

3. The Statute Should Not Be Read to Ignore the Realities of the Market.

Undeterred by the economic realities, BellSouth argues that the statute somehow must be read to insist upon the qualification

or office" "personal safety" "make calls when late." *Id.* As described in its 1996 Annual Report to Shareholders, BellSouth's wireless "strategy" bears no connection with wireline, except that the company "will provide our customers with bundled wireless and wireline services as regulations permit." BellSouth offers both cellular and PCS spectrum based services.

²³ Shapiro Dec. at 15 (emphasis in original) (footnote omitted).

of PCS providers under Track A. BellSouth argues that a PCS provider is a "competing provider of telephone exchange service (as defined in section 3(47)(A))."²⁴ In order to make this argument, BellSouth must necessarily overlook two key aspects of this phrase: the word "competing" and the specific reference to only subpart (A) of 3(47). First, the word "competing" cannot be read out of the statute. In the Oklahoma Order, the Commission construed the term "competing" to require that "the *competing* provider must actually be in the market, and therefore, beyond the testing phase."²⁵ This concept of commercial service and being "in the market" necessarily implies that the services actually being sold truly "compete" with the BOC. Plainly, not all "telephone exchange services" compete with one another. A "competing provider" must offer services *competitive* with the BOC's fixed local phone service. As the Commission has already found, mobile services do not compete with fixed services.

Further, it does not help BellSouth's construction that the FCC has found CMRS to be "telephone exchange service," because the FCC so found on the basis of the language of subsection 3(47)(B) and not subsection 3(47)(A). Under (B), services "comparable" to the set of telephone exchange services defined in (A) are also included in the section's definition -- but (A) and (B) remain distinct categories. Section 271(c)(1)(A)'s reference

²⁴ See BellSouth Br. at 12-15.

²⁵ Oklahoma Order at 13 (emphasis in original).

to only those telephone exchange services defined in part A but not part B utterly defeats BellSouth's strained interpretation.

The language of subpart (A) has existed since the passage of the 1934 Act. It was recognized by the courts and the FCC as a "statutory term of art, and means service within a discrete local exchange system."²⁶ It is best understood in contrast with "telephone toll service" also defined at Section 3(48) of the 1934 Act. By defining telephone exchange service to be service covered by the "exchange service charge," the term at a minimum connotes traditional basic phone service with a flat monthly charge, in contrast to toll services for which the usage-sensitive fees attach.²⁷ In this sense, it does not inform the instant debate at all.

BellSouth correctly notes that Congress did not intend Track A to include a requirement that a BOC demonstrably lose market share as a technical prerequisite to obtaining relief. However, it exaggerates greatly the significance of the deletion of the phrase "comparable in price, features, and scope" that was

²⁶ North Carolina Utilities Comm. v. FCC, 552 F.2d 1036, 1045 (4th Cir. 1977).

²⁷ The statute has sufficient flexibility to allow for some degree of local measured service pricing structures, a matter which is largely committed to state jurisdiction. See Southwestern Bell Telephone Co. v. United States, 45 F. Supp. 403, 405 (W.D.Mo. 1942) (rejecting FCC's attempt to regulate message charges for traffic within the Kansas City exchange area as exception to Section 221(b) and specifically dismissing the argument that message charges rendered service outside the statutory term "telephone exchange service").

achieved on the House floor by way of a Manager's amendment to H.R. 1555. While BellSouth's proposition that "Track A does not require that the competitor's service be equivalent in every respect to the BOC's"²⁸ is correct, BellSouth appears to really be suggesting that the competitive service need not be at all equivalent in any respect. This is wrong.

First, it must be noted that the deletion of the phrase "comparable in price, features and scope" was accompanied by the addition of new language cross-referencing to "a competing provider of telephone exchange service as defined in 3(47)(A)."²⁹ As described above, the FCC found mobile services to fall within the definition contained in 3(47)B. Second, the legislative clarification that cellular services do not qualify actually emphasizes Congress' intent not to permit mobile services to qualify.³⁰ PCS is not given such a blanket disqualification

²⁸ See BellSouth Br. at 12.

²⁹ 141 Cong. Rec. H6456 (daily ed. Aug. 4, 1995) (Manager's Amendment offered by Rep. Bliley). The original amendment references 3(44)(A), but the section was subsequently renumbered to reflect all new definitions added by the 1996 Act.

³⁰ The statutory language was added as part of the Manager's amendment, but was inserted to clarify the House Committee's intent from the time it was reported out to the full House. It was thus only coincidentally timed with the deletion of the "comparable" phrase, and BellSouth's efforts to weave some clear orchestrated intent in the deletion of one and the addition of another has no factual basis. See H.R. Rep. No. 104-204 at 77 (1995) ("The Committee does not intend for cellular service to qualify, since the Commission has not determined that cellular is a substitute for local telephone service").

because Congress was aware of FCC contemplation that this new service might evolve one day into a viable substitute. Third, the plain context of the statutory language -- to promote facilities based competition to the BOCs' monopoly -- informs the discussion and forbids such a hypertechnical reading of the section's terms.

Sprint is of course not suggesting here that PCS will never be able to provide a meaningful alternative to landline fixed telephone service. Through its partial ownership of Sprint Spectrum, Sprint is committed to investing the necessary capital and other resources necessary to allow PCS to realize its full economic potential. Currently, however, the unquestionably highest use of the spectrum remains mobile services that are complements to, not substitutes for plain old telephone service.³¹ BellSouth has itself stated this proposition most succinctly:

[T]he wireless industry would not jeopardize its mobile customer base (a segment growing at an estimated 30-40% per annum) by raising rates to mobile customers or decreasing quality as a result of providing fixed services to a relatively small and emerging segment.³²

³¹ Consistent with the Commission's confidence in the economic efficiencies of auctioning spectrum, the market has determined that, for the time being anyway, the best and highest use of this scarce resource is mobile service.

³² Amendment to the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Dkt. No. 96-6, *BellSouth Petition for Partial Reconsideration or Clarification* at 3 (filed Sept. 30, 1996).

BellSouth, by its own admission, cannot claim that PCS service providers are "competing provider[s]" at this time.

B. BellSouth Has Received Several Qualifying Requests.

While PCS carriers do not now meet the requirements of Track A, BellSouth has received many interconnection requests that, when implemented, will result in the provision of the kind of competing service described in Section 271(c)(1)(A).

The question of whether Track A or Track B applies in a given case requires the FCC to determine whether any CLEC or combination of CLECs has requested interconnection in order to provide predominantly facilities-based service to business and residential customers. BellSouth has itself provided unambiguous evidence that numerous facilities-based CLECs have entered or are preparing to enter local markets in Louisiana.

First, as to business services, BellSouth states that ACSI "introduced facilities-based business service in New Orleans on July 30, 1997."³³ On the residential side, there are numerous prospective facilities-based carriers that have requested access and interconnection. For example, Gary Wright states in his affidavit that, "BST fully expects Shell [SHELL Offshore Services Company] to introduce facility-based local exchange services beginning in its proposed New Orleans/Baton Rouge [local calling zones] by the end of 1997 with service offerings expanded to the entire state by mid-1998."³⁴ Wright further clarifies that

³³ BellSouth Br. at 18.

³⁴ See Wright Aff. at ¶ 48.